

EXHIBIT

A

1
2 Vanessa McKibban, a married woman,)
3 Plaintiff,) IN THE DISTRICT COURT
4 v.) BEXAR COUNTY, TEXAS
5 MMK Holdings, L.P. d/b/a/ Planet K,) Jury Trial Demanded
6 Defendant.)
7

8 **PLAINTIFF'S ORIGINAL PETITION**

9 TO THE HONORABLE COURT:

10 Plaintiff, Vanessa McKibban ("Ms. McKibban"), by and through her attorneys at
11 Lubin & Enoch, P.C., brings this action pursuant to, *inter alia*, the Texas Labor Code,
12 Tex. Lab. Code § 21.106(b) (the "Texas Labor Code") and Title VII of the Civil Rights
13 Act of 1964, 42 U.S.C. § 2000e-2(a)(1) ("Title VII").

14 **SELECTION OF DISCOVERY LEVEL**

15 1. The Plaintiff pleads that discovery should be conducted in accordance with
16 a discovery control plan under Texas Rule of Civil Procedure ("TRCP") 190.2.

17 **STATEMENT OF RELIEF SOUGHT**

18 2. Pursuant to TRCP 47(c), the Plaintiff seeks monetary relief in an amount of
19 \$250,000 or less. The damages sought are within the jurisdiction of this court.

20 **INTRODUCTION**

21 3. Ms. McKibban is a former employee of MMK Holdings, L.P., doing
22 business as Planet K ("Planet K").

PARTIES

7. Ms. McKibban was an “employee” of Defendants as that term is defined in Tex. Lab. Code § 21.002(7) and 42 U.S.C. § 2000e(f).

9. Planet K is an “employer” as that term is defined in Tex. Lab. Code § 21.002(8) and 42 U.S.C. § 2000e(b).

2

1 18. In early 2019, Ms. McKibban was recommended by her then-manager, Erin
2 Hernandez, for manager training.

3 19. On December 12, 2019, Ms. McKibban was placed on probation during her
4 manager training. Planet K alleged that she did not exceed managerial expectations;
5 however, Planet K did not adequately train her to perform her managerial responsibilities.

6 20. Ms. McKibban completed her probationary period on January 28, 2020, at
7 which point she reverted back to her position as a senior key holder.

8 21. On or around January 2020, Ms. McKibban discovered she was pregnant.
9 She disclosed this information a week later to her manager in training, Martin Rodriguez
10 (“Mr. Rodriguez”).

11 22. On February 18, 2020, Ms. McKibban went to a doctor’s appointment.
12 While at the appointment, Mr. Rodriguez sent her a message informing her that he
13 needed a note stating she was able to work with no restrictions.

14 23. Ms. McKibban brought this note, which had a letterhead that indicated her
15 appointment was for “Maternal Fetal Medicine” matters, to work the following day.

16 24. Ms. McKibban then received a call from another manager, Iyanna Preston
17 (“Ms. Preston”), who stated that Ms. McKibban was allowed to continue working until
18 the end of March but would then have to leave to prepare for her baby. Ms. McKibban
19 was surprised by this conversation, as she was able and willing to continue working.

20 25. Ms. McKibban later discussed this end date with Mr. Rodriguez, who
21 subsequently told her that she could stay until the end of April. At this point, based on
22

1 her discussions with Mr. Rodriguez and Ms. Preston, it was Ms. McKibban's
2 understanding that she was being put on forced maternity leave.

3 26. On March 4, 2020, Ms. McKibban was called into an unscheduled meeting
4 with Ms. Preston. During this conversation, Ms. Preston stated she had seen video
5 footage of Ms. McKibban sitting on a wooden countertop and that doing so while
6 pregnant was a liability. Other non-pregnant employees have sat on this countertop but
7 were not reprimanded like how Ms. McKibban was.

8 27. Ms. Preston then told Ms. McKibban that although they had discussed
9 March 31, 2020, as her last day, March 4, 2020, would be her actual last day.

10 28. When Ms. McKibban asked why March 4, 2020, was her last day, Ms.
11 Preston further stated that she wanted Ms. McKibban to have a happy and healthy
12 pregnancy.

13 **FIRST CLAIM FOR RELIEF**
14 **Violation of Texas Labor Code § 21.106(b)**

15 29. Ms. McKibban re-alleges and incorporates by reference the foregoing
16 paragraphs as if fully set forth herein.

17 30. Defendant has deliberately and willfully discriminated against Ms.
18 McKibban on the basis of her sex due to her pregnancy, in violation of Tex. Lab. Code §
19 21.106(b).

20 31. Pursuant to Tex. Lab. Code §§ 21.258 to 262, Ms. McKibban is entitled to
21 recover all equitable relief, liquidated damages, reasonable attorneys' fees, and costs of
22 the action.

SECOND CLAIM FOR RELIEF
Violation of Title VII

32. Ms. McKibban re-alleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

33. Defendant has deliberately and willfully discriminated against Ms. McKibban on the basis of her sex due to her pregnancy, in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1).

34. Pursuant to 42 U.S.C. § 2000e-5, Ms. McKibban is entitled to recover all equitable relief, liquidated damages, reasonable attorneys' fees, and costs of the action.

DAMAGES

35. Ms. McKibban re-alleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

36. As described more fully in the preceding paragraphs of this Petition, the decision of Defendant to terminate Ms. McKibban on the basis of her pregnancy was the direct cause of Ms. McKibban's damages, including loss of wages.

37. These lost wages began on March 4, 2022, the date Ms. McKibban was terminated, and continue to accrue as long as Ms. McKibban is deprived of the opportunity to continue working at Planet K.

ATTORNEY'S FEES

38. It was necessary for Ms. McKibban to secure the services of an attorney to prepare and prosecute this suit. Judgment for attorney's fees through final judgment after appeal should be granted against Defendant and in favor of Ms. McKibban for the use and

1 benefit of Ms. McKibban's counsel. In the alternative, Ms. McKibban requests that
 2 reasonable attorney's fees through final judgment after appeal be taxed as costs to be
 3 ordered paid directly to her attorney, who may enforce the order in the attorney's own name.

4 39. Ms. McKibban is entitled to attorney's fees pursuant to 42 U.S.C. 2000e-
 5 5(k), which provides in part that "[i]n any action or proceeding under this subchapter the
 6 court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee
 7 (including expert fees) as part of the costs. . . ."

8 40. Ms. McKibban is also entitled to attorney's fees pursuant to Tex. Lab. Code
 9 § 21.259, which provides in part that "[i]n a proceeding under [Chapter 21], a court may
 10 allow the prevailing party . . . a reasonable attorney's fees as part of the costs."

11 WHEREFORE, Ms. McKibban requests that Planet K be cited to appear and
 12 answer, and on final trial, that the Court enter judgment for Ms. McKibban and against
 13 Planet K for the following:

- 14 A. Compensatory and punitive damages, in an amount appropriate to the
 15 proof adduced at trial, pursuant to Tex. Lab. Code §§ 21.2585;
- 16 B. Equitable relief, including an award of back pay, pursuant to 42 U.S.C. §
 17 2000e-5(g) and Tex. Lab. Code §§ 21.258;
- 18 C. Attorney's fees pursuant to 42 U.S.C. § 2000e-5(k) and Tex. Lab. Code §
 19 21.259(a);
- 20 D. Litigation costs pursuant 42 U.S.C. § 2000e-5 and Tex. Lab. Code §§
 21 21.258(b)(6) & 21.259(a);
- 22 E. Prejudgment interest as provided by law;

- 1 F. Interest after judgment as provided by law;
- 2 G. Such other legal and equitable relief as the Court deems just.
- 3

4 RESPECTFULLY SUBMITTED this 12th day of October 2022.

5 LUBIN & ENOCH, P.C.

6

7 /s/ Nicholas J. Enoch
NICHOLAS J. ENOCH
State Bar No. 24042618
nick@lubinandenoch.com

9 CLARA S. ACOSTA
State Bar No. 24115993
clara@lubinandenoch.com
221 N. Kansas Street, Suite 700
El Paso, Texas 79901
(915) 585-8008 (Phone)
(602) 626-3586 (Fax)

13 ATTORNEYS FOR PLAINTIFF

14

15 **CERTIFICATE OF SERVICE**

16 Original of the foregoing Complaint filed with the Court, via File & Serve-Texas,
on this 12th day of October 2022.

17

18 /s/ Shana Battles

19

20

21

22